IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1619 of 1999
With
SPECIAL CIVIL APPLICATION No. 1620 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALIRAM MANOHARDAS NIMAVAT - Petitioner(s)
Versus
KARJALA SEVA SAHAKARI MANDALI LTD. & 1 - Respondent(s)

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Appearance :
MR AK CLERK for Petitioner(s) : 1,
MR MR MENGDEY, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/02/2007

ORAL JUDGMENT

1. In these petitions, the petitioners have challenged a common judgement dated 7th November,

1998 passed by the Cooperative Tribunal upholding two separate orders passed by the Inquiry Officer against the petitioners.

2. It is not in dispute that the petitioners were the paid Secretaries of respective Cooperative Society in which they were employed.

3. The cooperative Societies concerned agreed to revise the pay scales of its employees through a settlement arrived at between the society and the employees Union before the Conciliation Officer. Pursuant to such settlement, the Societies also released certain arrears of salaries.

4. The District Registrar finding that the action of the society was irregular, issued charge-sheet against the petitioners along with some other office bearers of the society. The thrust of the charges was that that by agreeing to pay higher salaries, the petitioners were liable to be proceeded against under Section 93 of the Gujarat Cooperative Societies Act (here-in-after referred to as “the said Act”).

5. The petitioners denied the charges. The Inquiry Officer however, concluded against the petitioners and passed separate orders seeking recovery of the payments made. The petitioners therefore, separately approached before the

Cooperative Tribunal which rejected the appeals by impugned common order. The petitioners are therefore, before this Court in the present petition.

6. In view of the undisputed position that the petitioners were paid Secretaries of the societies, it is not necessary to go into other details of the nature of charges and material on record. Suffice to say that nothing has been brought on record to suggest that either of the petitioners had any authority to take decision for an on behalf of the society. There is nothing on record to suggest that the petitioners were involved in any decision making process which ultimately resulted into the settlements. The decision was taken by the officers of the society through resolutions. The petitioners as paid officers of the societies had no role to play in arriving at such decisions. They therefore, could not have been proceeded against under Section 93 of the said Act, when they were not party to any decision which led to ultimate resolutions passed by the societies. Thus even if there was any misapplication or misfeasance of the funds of the society, the petitioners were in no way responsible for the same. On this ground alone, so far as these petitioners are concerned, proceedings under Section 93 of the said Act could not have been sustained.

7. In the result, petitions are allowed. The impugned common order dated 7th November, 1998 passed in both the petitions by the Cooperative Tribunal are quashed. Rule is made absolute. No order as to costs.

(Akil Kureshi,J.)

(raghu)